

# TRANSGENDER EQUALITY AND THE



# FEDERAL GOVERNMENT

A Resource from the National Center for Transgender Equality  
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*National Center for*  
**TRANSGENDER  
EQUALITY**

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# TRANSGENDER EQUALITY AND THE FEDERAL GOVERNMENT

## PROPOSED POLICY CHANGES

The laws and policies of the federal government have a tremendous impact on all people in the United States, including transgender people. With the swearing in of the new Congress and the new Presidential Administration, we have an unprecedented opportunity to improve the lives of transgender people and our families. This document outlines the federal policy areas we must work to change to advance transgender equality.

NCTE has identified the issues that must be addressed before transgender people can participate equally in American society. Many of the laws and policies listed in this document are remnants of old stereotypes, such as the inhumane prison healthcare policies, while others, such as the REAL ID Act, seem to hurt transgender people simply as an unintended consequence. Still others, such as the Defense of Marriage Act (DOMA), are intentionally discriminatory. Implementing these recommended changes in laws and policies will dramatically enhance the lives of transgender people and our families.

This list was developed by NCTE with the guidance of numerous individuals and organizations. Staff and volunteers from various partner organizations have spent countless hours identifying and analyzing these policies. Throughout the process, work groups were convened to discuss the impact that federal policies have on transgender people; many of these work groups will continue to meet as we move forward.

NCTE has separated issues into specific topic areas. All of these issues are vital to the wellbeing of transgender people; the list is not prioritized. Moreover, this is not an agenda laying out NCTE's organizational goals; rather, it is a document mapping out the federal government policies that impact transgender people.

This document is a list of federal laws and policies; it intentionally omits a broad array of non-federal transgender movement goals such as the reform of the transgender-related diagnoses in the pending Diagnostic and Statistical Manual (DSM-V). Finally, we realize this is not an exhaustive list and there is no doubt that we have overlooked issues, which will be added in time.

We hope that individuals and organizations can use this federal government map in the way that best suits your transgender advocacy work.

## CONTENTS

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Discrimination.....	3
Federal Employment.....	4
Government Contractors.....	5
Census Bureau.....	5
ID Documents and Records.....	6
Privacy.....	7
Health.....	8
HIV/AIDS.....	9
Youth Homelessness.....	10
Education.....	10
Military.....	12
Veterans.....	12
Aviation.....	13
Seniors.....	13
Immigration.....	14
Homeland Security.....	15
Federal Prisons.....	15
Family and Partnership Recognition.....	16
Faith-Based Initiatives.....	16
Hate Crimes.....	17
Conclusion.....	17

# TRANSGENDER EQUALITY AND THE FEDERAL GOVERNMENT

## DISCRIMINATION

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Numerous studies have shown that transgender people face disproportionate amounts of discrimination in all areas of life, especially in employment and health care. As the American economy worsens, the discrimination faced by transgender people is becoming even more acute. Often forced into already unstable jobs and careers, and often facing compounding bias because of race or age, the economic well-being of transgender people is being challenged today like never before. The federal government has a responsibility to protect people from discrimination. Congress and the Administration can improve transgender lives in a significant way by advancing the anti-discrimination protections outlined here.

- **ENDA.** Congress should pass the comprehensive Employment Non-Discrimination Act (ENDA) that would protect workers based on sexual orientation and gender identity.
- **Comprehensive Civil Rights.** Congress should pass a comprehensive civil rights bill that protects people from discrimination based on gender identity and expression as well as sexual orientation in regards to public accommodations, housing, credit, education, and federally-funded programs.
- **ADA Exemptions.** In order to make federal law consistent with the Employment Non-Discrimination Act, Congress should alter or remove problematic language regarding transgender individuals in the Americans with Disabilities Act and related federal agency regulations.
- **Provision of Government Services.** Each federal agency should issue a policy directive stating that it will ensure that individuals who receive services from that agency will not be discriminated against on the basis of gender identity or expression.
- **EEOC and Title VII Complaints.** The Equal Employment Opportunity Commission (EEOC) should investigate and mediate Title VII complaints from transgender people based on sex discrimination in addition to issuing Right to Sue letters.
- **EEOC Freedom to Compete Initiative.** The Equal Employment Opportunity Commission Freedom to Compete Initiative (FCI) should hold a forum to discuss employment discrimination on the basis of sexual orientation and gender identity and expression.
- **SBA Categorization.** The Small Business Administration should include transgender people as eligible for the presumption of social and economic disadvantage with regard to the SBA Disadvantaged Business Enterprise. The U.S. Department of Transportation should update the Disadvantaged Business Entity regulations to comport with the SBA regulations.
- **Federal Housing.** The President should issue an Executive Order amending Executive Order 11063 to prohibit discrimination on the basis of sexual orientation or gender identity or expression in federally assisted housing programs.

## FEDERAL EMPLOYMENT

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Many transgender people serve our country by working for the federal government, and many more are interested in working for one of our nation's largest employers. However, current federal government policies hinder transgender people from pursuing federal government jobs. A transgender person can be passed over for hire or can be fired solely based on the fact that he or she is transgender. Additionally, there are insurmountable hurdles for many transgender people who seek to update their employment records, change their identification and employee badges, or get coverage for medically necessary health care. Implementing the policies noted here will ensure that transgender people can work for the federal government without fear of job loss or harassment.

- **Government-Wide Job Protection.** The President should issue an Executive Order to clarify that discrimination against federal civilian employees on the basis of gender identity or expression is prohibited, similar to Executive Order 11478, which prohibits discrimination on the basis of sexual orientation.
- **Agency Job Protection.** Each federal agency should issue a policy directive stating that it will ensure that federal employees will not be discriminated against on the basis of gender identity or expression.
- **Office of Special Counsel.** The Office of Special Counsel should investigate complaints and enforce laws and policies protecting individuals from discrimination on the basis of sexual orientation and gender identity or expression.
- **ID Cards and Badges.** Each federal agency should clarify its employment policies to allow transgender people to change name and gender on identification cards and badges without requiring surgery or undue hurdles.
- **Employment Records.** The Office of Personnel Management (OPM) should develop a policy allowing federal employees to update employment records to reflect a name and gender change. This policy should not include a surgery requirement for gender changes.
- **Eliminating No-Matches.** The Office of Personnel Management should clarify its policy to ensure that gender inconsistencies between Social Security records and employment applications or personnel records during background checks do not disqualify individuals from federal employment. Additionally, the policy should provide that any gender discrepancy found in the Electronic Verification of Vital Events (EVVE) system must be kept confidential.
- **Fair Health Benefits.** The Office of Personnel Management should ensure that Federal Employees Health and Benefits Plans (FEHBP) provide coverage for medically necessary transition-related care for federal employees and their partners and dependents.
- **Security Clearances.** The FBI and other agencies responsible for security clearances and other background checks should issue directives confirming the policy that security clearances will not be denied or revoked as a result of transgender status. Additionally, these agencies must treat transgender status with appropriate confidentiality.

## GOVERNMENT CONTRACTORS

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The federal government provides billions of dollars in taxpayer money to outside contractors each year. Those contractors and subcontractors should be expected to uphold the same human rights standards as the federal government itself. Transgender people who work for government contractors or who bid on government contracts should expect to be treated fairly and should be judged on their merits. Carrying out these recommendations will provide transgender people who are government contractors or who work for those contractors with the security of knowing that they will be judged based solely on the work that they do.

- **Non-Discrimination by Contractors.** The President should issue an Executive Order that prohibits federal contractors and subcontractors from discriminating on the basis of sexual orientation and gender identity or expression.
- **Federal Contract Compliance.** The Office of Federal Contract Compliance should include transgender people under the definition of “minority.”

## CENSUS BUREAU

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The federal government has never attempted to directly study transgender people and has not even tried to count the number of transgender people who live in the U.S. In fact, the census bureau has barely even begun to consider how to undertake studies that count transgender people. Government agencies rely heavily on data when deciding on programs, funding and support. Therefore, this lack of data is a significant problem that echoes through every policy area. Adopting the proposal below will be a significant step in addressing this issue and will advance many other goals by providing accurate data about transgender people.

- **Need for Census Data.** The U.S Department of Commerce Bureau of the Census should include in its data collection standards information counting and including lesbian, gay, bisexual, and transgender people. The Bureau should investigate how to study transgender people in various government surveys, including the 2020 decennial census.

## ID DOCUMENTS AND RECORDS

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As the federal government requires the use of identification for more purposes, it is becoming increasingly difficult for many transgender people to access accurate documents. Without the consistent identification that many people take for granted, it can be impossible to travel, open a bank account, or apply for a job. The Bush administration implemented ideologically-driven restrictions for changing ID, making it especially difficult to access passports and social security accounts, which are “gateway” documents that can impact ability to acquire other forms of ID. Also, transgender people are severely impacted, as employers are increasingly required to match employees’ personal data with SSA accounts to verify work status. Both strong privacy policies and gender change rules that take into account evolving medical standards are necessary for transgender people to fully participate in society.

- **Repeal REAL ID Act.** Congress should repeal the REAL ID Act, which, among other things, imposes federal standards for state drivers licenses and state ID cards.
- **Passport Policies.** The Department of State should update its policy for changing gender designations on passports in accordance with evolving medical standards to eliminate the current requirement for sex reassignment surgery.
- **CRBA Policies.** The Department of State should update its policy in accordance with evolving medical standards to eliminate the current surgery requirement to change a Consular Report of Birth Abroad (CRBA), a birth certificate for U.S. citizens who are born in other countries.
- **Federal Building Protocols.** The federal government should provide protocols and training for federal building security personnel regarding transgender people and appropriate identification requirements.
- **Social Security Policies.** The Social Security Administration (SSA) should update its policy for changing gender designations in SSA records that eliminates the current requirement of surgery in accordance with evolving medical standards.
- **Voting Rights.** The Department of Justice (DOJ) should develop and implement regulations prohibiting poll workers from denying voters their right to vote based on gender expression or a real or perceived inconsistency between appearance and the gender designations on the voter’s ID card.
- **Model Vital Statistics Act Update.** The National Center for Health Statistics (NCHS) should update the Model Vital Statistics Act to eliminate the surgical requirement for changing the gender designation on birth certificates. Additionally, the discretion of the State Registrars to reject the requested change should be removed from the Model Vital Statistics Act Regulations.

## PRIVACY

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Privacy is both a right and a matter of survival for transgender people. Disclosure of transgender status can result in disrespect, discrimination, and even violence. Recent degradation of privacy laws in the United States has disproportionately, though often unintentionally, impacted transgender people. Implementing the following proposals will allow individuals' transgender status to remain private without negatively impacting national security interests or any other relevant government programs or purposes.

- **Eliminate Gender No-Match Letters.** The Social Security Administration should eliminate any programs allowing gender “no-match” letters to be issued to employers or other entities and should keep transgender status confidential.
- **Gender on Government Forms.** The Office of Management and Budget (OMB) should issue a Guidance eliminating collection of gender or gender-related data on government forms when it is irrelevant or unnecessary to accomplish the specific goals of the agency or program issuing the form.
- **REAL ID Rules.** The Department of Homeland Security should develop and implement final rules for the REAL ID Act regarding data collection, storage and sharing of information between jurisdictions. These rules should ensure that personal medical information immaterial to driving ability or enforcement of laws is shielded from data collection, storage and information sharing.
- **USPS Privacy Rules.** The United States Postal Service should develop a policy to allow transgender people to receive mail at a post office box and a mailing address in their preferred name without a legal name change.
- **DOJ FOIA Guidance.** The Department of Justice should issue a Guidance to explicitly clarify that information relating to transgender status, including name or gender changes, must be redacted from all personally identifying records furnished under the Freedom of Information Act.
- **Agriculture Programs.** The Department of Agriculture should clarify its policy to ensure that programs providing food stamps and other assistance to low-income people and families keep information about Social Security gender inconsistencies confidential and not use that information as a disqualifying factor.
- **Federal Background Checks.** The FBI and other agencies should have rules to ensure that when it is irrelevant, transgender status is kept confidential in reports on federal background checks.

## HEALTH

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While healthcare access is a crisis in America, broadly speaking, it is especially acute for transgender people. We face significantly disproportionate job loss and job fragility and, therefore, a much-higher-than-average lack of insurance. Additionally, most public and private health insurance plans, when they are available to transgender people at all, have discriminatory exclusions for transgender-related care that often is used to exclude virtually all care. Finally, due to the lack of research data about transgender people there is a lack of funding for transgender health care that often precludes effective public health services. Implementing the recommendations listed below will give transgender people equal access to health care, ultimately saving numerous lives.

- **Healthcare Reform.** The Administration and Congress should ensure that the healthcare reform debate includes and fairly considers the needs of transgender people including the importance of medically necessary transition-related care.
- **Eliminating Health Disparities.** Congress should amend the Public Health Service powers and duties to include lesbian, gay, bisexual, and transgender people as a “population marked by health disparities.” If amended, both the National Center for Health Statistics and the Agency for Healthcare Research and Quality should study the specific health needs and disparities of lesbian, gay, bisexual and transgender people.
- **AHRQ Research.** The Agency for Healthcare Research and Quality (AHRQ) should ensure that its researchers include information about lesbian, gay, bisexual, and transgender people when researching healthcare quality, costs, outcomes, and patient safety.
- **Genetic Information Non-Discrimination Act.** The Department of Health and Human Services (HHS) should promulgate regulations to clarify that transgender status is protected under the Genetic Information Nondiscrimination Act (GINA) and that transgender status does not fall under the exclusion of “sex” in the Act.
- **Provider Conscience Rules.** The Department of Health and Human Services should rescind the recently issued “Provider Conscience” regulations that allow health care providers to refuse to treat certain individuals based on the providers’ personal beliefs.
- **Medicare.** The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) should allow Medicare coverage for medically necessary transition-related health care.
- **Medicaid.** The federal government should ensure that Medicaid programs in all fifty states cover medically necessary transition-related care.
- **NIH Research.** The National Institutes of Health (NIH) should fund research on the efficacy of various transition-related treatments.
- **FDA Blood Donation Ban.** The Food and Drug Administration (FDA) advisory panel should lift the ban on blood donation by gay men, which has been used to exclude transgender donors regardless of their gender or sexual orientation.
- **Public Health Surveys.** The Centers for Disease Control and Prevention (CDC) should develop a policy that ensures transgender people are included in all population-wide government public health surveys, especially the National Health Interview Survey and the Behavioral Risk Factor Surveillance System.
- **Access to Title X Clinics.** The Department of Health and Human Services should develop a model non-discrimination policy that includes sexual orientation and gender identity and expression to be disseminated to all Title X Family Planning Clinics.
- **Needle Exchange Programs.** Congress should repeal the federal ban on needle exchange and authorize the development of transgender-specific needle exchange programs.

- **FQHC Training.** The Department of Health and Human Services Health Resources and Services Administration should encourage Federally Qualified Health Centers, also known as 330-funded clinics, to use part of their two percent technical assistance requirement for training around transgender issues.
- **SAMHSA Special Populations.** The Substance Abuse and Mental Health Service Administration (SAMHSA) and the National Institute of Mental Health (NIMH) should specifically include lesbian, gay, bisexual, and transgender people in the definition of Special Populations.
- **Allowability of IRS Deductions.** The Internal Revenue Service (IRS) should clarify its policies and guidance publications to make clear the allowance of medical deductions for transition-related care.

## HIV/AIDS

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The continuing HIV/AIDS epidemic is the number one public health problem that touches transgender people and it extracts an insurmountable human cost. The federal government must swiftly move forward in the fight against HIV/AIDS starting with a comprehensive national AIDS strategy that specifically takes into account transgender people and removes the barriers that limit transgender access to treatment and prevention measures. Inclusion of the policies outlined below will combat HIV/AIDS in the transgender community and will also benefit the general public health.

- **Non-Discrimination.** The President should issue an Executive Order to clarify that all federal agencies are prohibited from using HIV status as a basis for restrictions or exclusions on applicants and employees.
- **National AIDS Strategy.** The federal government should create and implement a comprehensive and coordinated national HIV/AIDS strategy that includes provisions that address the impact of HIV/AIDS on transgender populations.
- **Increased Funding.** Both the President's budget proposal and the Appropriations process should include an increase in funding for HIV/AIDS prevention, care, treatment, and research, including funding for transgender-specific materials and services.
- **Targeted Prevention.** The Centers for Disease Control and Prevention (CDC) should develop prevention programs that focus on the communities and populations that are most at risk for HIV, including various transgender populations.
- **Separate Population Categories.** The Centers for Disease Control should identify transgender people as a category distinct from Men who have Sex with Men (MSM) for provision of HIV/AIDS prevention and treatment funding.
- **Immigration Ban.** The Centers for Disease Control should eliminate the ban on immigration by individuals who have HIV/AIDS. HIV should be removed from the list of "communicable diseases of public health significance" that is used by the U.S. Citizenship and Immigration Services (USCIS) and the Department of State, which currently prevents foreign nationals from obtaining non-immigrant visas and legal permanent residence.

## YOUTH HOMELESSNESS

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Transgender youth are extremely vulnerable to dropping out of school, becoming homeless, and attempting and/or committing suicide. Accurate data about the issues that transgender youth face is scarce, but some of the reasons for their vulnerability include increased occurrence of bullying, abandonment by families, job discrimination, and lack of access to appropriate identification documents. Furthermore, services for transgender youth are limited and, where available, difficult to access. The federal government can significantly reduce the risk to this vulnerable population by addressing the following proposals.

- **Aid for Homeless Youth.** The Department of Housing and Urban Development should recognize unaccompanied homeless youth as a distinct special needs population, including LGBT homeless youth, and should create a long-term Youth Housing Strategy that is inclusive of the distinct circumstances of LGBT homeless youth.
- **Training Standards.** The Department of Health and Human Services, Administration for Children and Families should require minimum training standards for federal funding recipients working with runaway and homeless youth. These training standards should include a certification process for working with lesbian, gay, bisexual, and transgender youth.

## EDUCATION

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Despite the American promise to educate every person, numerous barriers exist that prevent transgender students from accessing this opportunity and prevent transgender educators from contributing to this shared goal. Transgender students face discrimination from systems that fail to acknowledge who they are and they face verbal harassment and violence from fellow students leading to absenteeism and dropping out. Adults face discrimination in hiring practices and access to job training programs, which reduces our economic competitiveness. The following policies will strengthen our schools and expand the opportunities of education, allowing us to fulfill our promise and keep the U.S. competitive in the global economy.

- **Safe Schools Improvement Act.** Congress should pass the Safe Schools Improvement Act, which would amend the Safe and Drug-Free Schools Act to include bullying and harassment prevention programs. These programs should include specific information about bullying and harassment that targets students because of their gender identity or expression.
- **Non-Discrimination in Education.** Congress should pass a bill that protects students from discrimination and harassment on the basis of sexual orientation and gender identity and expression.

- **Internet Filtering.** Congress should amend the No Child Left Behind Act to remove the Internet filtering mandate on schools receiving federal funding for computer-related Internet technology. Internet filters often restrict access to transgender-related content and information. Alternatively, rules should be developed calling for more sophisticated filtering software and protocols that distinguish non-sexual LGBT online content from sexual content.
- **Federally Conducted Programs.** The President should issue an Executive Order amending Executive Order 13160 to prohibit discrimination on the basis of gender identity or expression in federally conducted education and training programs.
- **Model Non-Discrimination Policy.** The Department of Education should develop a model policy that prohibits discrimination and harassment on the basis of sexual orientation and gender identity and expression. The policy should protect all students, staff, and faculty, and should be disseminated to individual public school districts across the nation.
- **Increased Prevention Program Resources.** The Department of Education should invest greater federal resources in bullying and harassment prevention activities to create a safe school environment for all children.
- **Data Collection.** The National Center for Education Statistics should ensure that data collection includes detailed information about bullying, harassment, and other school violence, including whether the victim's sexual orientation or gender identity or expression were at issue.
- **Title IX Regulations.** The Department of Education should amend its Title IX regulations to allow transgender students 1) to attend single-sex classes consistent with their gender identity and expression; 2) to live in single-sex housing that is consistent with their gender identity and expression; 3) to participate in the athletics programs that are consistent with their gender identity and expression; and 4) to be treated consistently with their gender identity and expression in all other regards.
- **Job Placement Program.** The Department of Education Office of Vocational and Adult Education should establish an education and job placement program for transgender people.
- **Abstinence-Only Funding.** All federal funding for abstinence-only education programs should be removed from the budget and the funding used for comprehensive sex education programs that include accurate and age-appropriate information about sexual orientation and gender identity.
- **Comprehensive Suicide Prevention.** The Department of Education should mandate that all states provide comprehensive suicide prevention education to all high school students. The mandate should require that the curriculum meets minimum standards, including a discussion of lesbian, gay, bisexual, and transgender youth and why they have an increased risk of suicide.
- **Bureau of Indian Education.** The Department of Interior Bureau of Indian Education (BIE) should develop and implement a model policy prohibiting harassment and discrimination on the basis of sexual orientation and gender identity and expression. The BIE should clarify that this policy applies to dormitories and other housing in addition to educational programs.
- **Youth@Work.** The Equal Employment Opportunity Commission Youth@Work program, a national education and outreach program to promote equal employment opportunities for youth, should include content about gender identity and expression in its various programs.

## MILITARY

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Transgender people are denied the ability to join the armed forces as a result of various discriminatory policies. Not only is this unjust to individual transgender people who wish to serve their country through military service, it weakens our national defense by barring qualified people from duty. The following proposals will end this discrimination and strengthen the military by attracting and retaining qualified personnel.

- **Repeal “Don’t Ask Don’t Tell”.** Congress should pass the Military Readiness Enhancement Act, which would repeal the military’s “Don’t Ask, Don’t Tell, Don’t Pursue” policy. Although this policy deals specifically with sexual orientation, privacy for transgender service members and even the ability to serve is also hampered by the ban.
- **Ability to Serve.** The Department of Defense should eliminate transgender status and gender identity disorder diagnosis as automatic disqualifications from military service and should ensure that medical fitness standards treat transgender service members equally with all other service members.
- **Uniform Code of Military Justice.** The Department of Defense should revise the relevant sections of the Uniform Code of Military Justice to allow transgender people to serve openly.
- **Registering with Selective Service.** The Selective Service System should change its policies to respect gender identity in determining who is required to register with the Selective Service.
- **Anti-Harassment Action Plan.** The Department of Defense should amend its Anti-Harassment Action Plan to include gender identity and expression and should enforce the plan.
- **DD-215 Forms.** The Department of Defense should issue and enforce a consistent policy for issuance of an amended Report of Separation (DD-215). Specifically, the Air Force should be required to issue DD-215 forms and the surgery requirement to amend gender on military discharge papers should be eliminated for all branches.
- **DEERS Records.** The Department of Defense should create a policy for updating the Defense Enrollment Eligibility Reporting System (DEERS) system that allows alteration of gender. Additionally, the policy should allow the system to be automatically updated when the underlying service record is changed.
- **DFAS Records.** The Department of Defense should create a policy for updating the Defense Finance and Accounting Service (DFAS) system that allows alteration of gender. Additionally, the policy should allow the system to be automatically updated when the underlying service record is changed.

## VETERANS

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Despite the prohibition of military service by openly transgender people, many thousands have served in the armed forces, and continue to serve, before transitioning. Once out of the military, transgender veterans are often unable to access the health care they need to due to discriminatory policies. Furthermore, benefits available to most veterans, such as special mortgage and student

loan rates, can be difficult to access because inflexible military documentation rules restrict transgender veterans from having appropriate and consistent proof of service. We owe it to our veterans to deliver the benefits they were promised and have earned.

- **VA Model Policy.** The Department of Veterans Affairs should develop a model policy for the fair and competent treatment of transgender patients at all VA facilities. The policy should require that VA personnel refer to transgender veterans based on their self-identified gender, provide appropriate gender-specific care, and assign housing or other facilities based on self-identified gender.
- **Transition-Related Care.** The Department of Veterans Affairs should eliminate the current exemption of transition-related health care services. VA facilities should also ensure the provision of competent physical and mental health services for transgender veterans.
- **Data Quality Requirements.** The Department of Veterans Affairs Data Quality Requirements should be amended to eliminate the requirement for veterans to provide legal documentation in order to be allowed to amend gender designation in the database.

## AVIATION

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During recent years, the Federal Aviation Administration has inexplicably required transgender pilots to undergo a series of unfair and irrelevant psychological tests when renewing the medical certificates they need to keep their pilots licenses and often their jobs. This requirement is not in place for other pilots and defies both scientific and common-sense justification.

- **FAA Medical Certificates.** The Federal Aviation Administration (FAA) should develop a science-based policy to grant medical certificates to transgender pilots without requiring irrelevant information regarding surgery or unrelated psychological testing.

## SENIORS

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The federal government has a long-standing priority of making sure that seniors are cared for as they age. Federal systems such as Medicare and Social Security provide much-needed assistance for individuals who are no longer able to work. However, the federal government does not collect data on transgender seniors, nor does it take into account that transgender seniors face particular hurdles. The adoption of these policies will ensure that transgender seniors receive the equal benefits that they deserve.

- **Data Collection.** The Administration on Aging should ensure that states that receive federal funding for data collection collect data regarding lesbian, gay, bisexual, and transgender seniors.
- **Targeted Populations.** The Administration on Aging should ensure that lesbian, gay, bisexual, and transgender seniors are included as vulnerable populations that have the “greatest social need” for services and funding.

## IMMIGRATION

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Immigrants in America face a range of challenges and hostilities, and the current, broken immigration system violates basic standards of decency through indefinite detention, separation from partners and the denial of medically necessary healthcare. Because of sometimes unclear documentation, challenges to their marital status, and blatant discrimination, transgender immigrants face additional hardships. The following proposals could ameliorate these problems and protect human rights for everyone.

- **Uniting American Families Act.** Congress should pass the Uniting American Families Act, which would grant equal immigration rights to same-sex bi-national couples.
- **Immigration and Marriage.** The Department of Homeland Security (DHS) should issue a memorandum instructing DHS personnel to recognize, for immigration purposes, different-sex marriages where one spouse is transgender so long as the marriage is valid in the jurisdiction where and when it was entered into.
- **Immigration Documents.** DHS should update its criteria for issuing immigration documents to transgender people to clarify that there is no surgery requirement for changing gender on those documents.
- **Embassy Human Rights Reports.** The Department of State should require that all embassies provide information regarding discrimination or violence based on sexual orientation and gender identity or expression in their annual human rights reports.
- **Yogyakarta Principles.** The Department of State should require the use of the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity or expression and should include a definition for gender identity or expression.
- **Housing Detainees.** Immigration and Customs Enforcement should update its policy for immigrant detainees to place transgender detainees in the housing that reflects the accurate and appropriate gender in which they live, except where the detainee requests an exception out of a reasonable concern for personal safety.
- **Classification of Detainees.** The Department of Homeland Security should issue specific policies regarding the classification and management of transgender detainees that take into account individualized factors such as a person's self-identification of their gender as well as the individual's safety.
- **Safety of Transgender Detainees.** The Department of Homeland Security should issue Program Statements that delineate adequate measures to specifically protect the physical safety of transgender detainees without relying on automatic segregation or long-term administrative isolation.
- **Access to Healthcare.** The Department of Homeland Security should update its Detention Standards Manual to provide transgender detainees with access to hormone therapy and other transition-related health care and to ensure continuity of care after transfer to a new facility.
- **HIV/AIDS and Detainees.** The Department of Homeland Security should update its Detention Standards Manual to ensure that detainees with HIV/AIDS are guaranteed voluntary counseling and testing, treatment according to nationally accepted clinical guidelines, continuity of care within the facility and upon transfer, and confidentiality of HIV status.

## HOMELAND SECURITY

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As the Department of Homeland Security has greatly expanded, many programs have been established that were designed without taking transgender people into account. The proposals outlined below will ensure that transgender people are treated fairly without negatively impacting the vital mission of the Department.

- **Transgender Travelers.** The Transportation Security Administration (TSA) should develop and implement a policy that calls for polite and appropriate treatment of transgender travelers and ensures that a person will not be denied their right to travel solely due to a real or perceived inconsistency between the person's gender expression and the gender designation on their ID.
- **FEMA Disaster Programs.** The Federal Emergency Management Agency (FEMA) should develop a policy banning discrimination on the basis of sexual orientation and gender identity and expression for both emergency shelter and long-term housing assistance. Additionally, a protocol should be developed for processing transgender people that ensures confidentiality.
- **DHS Training.** The Department of Homeland Security (DHS) should implement trainings for all DHS personnel who interact with the public to counter discrimination based on sexual orientation and gender identity and expression.

## FEDERAL PRISONS

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The federal prison system is in dire need of comprehensive reform and its outdated policies negatively impact transgender individuals in multiple ways. In addition to being denied medically necessary health care, transgender prisoners are often housed without regard for their physical safety and are disrespected by using improper pronouns or wrong names. An update of federal prison policies as outlined below will provide transgender prisoners with humane treatment, as guaranteed by the U.S. Constitution.

- **Access to Healthcare.** The Federal Bureau of Prisons should issue Program Statements ensuring transgender prisoners have access to all medically necessary transition-related health care.
- **Classification of Prisoners.** The Federal Bureau of Prisons should issue specific policies regarding the classification and management of transgender prisoners that take into account individualized factors such as a person's self-identification of his or her gender and safety.
- **Safe Housing of Prisoners.** The Federal Bureau of Prisons should issue Program Statements that delineate adequate measures to specifically protect the physical safety of transgender inmates without relying on automatic segregation or long-term administrative isolation.
- **Prison Rape Elimination Act Regulations.** Standards set forth by the Prison Rape Elimination Commission authorized by the Prison Rape Elimination Act should be finalized and implemented by the Attorney General in a way that protects transgender federal prisoners from sexual assault.

## FAMILY AND PARTNERSHIP RECOGNITION

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Just as non-transgender people have the ability to adopt children, to take time off from work to take care of family members, and to get married, transgender people should also be entitled to those legal protections. If implemented, the proposals listed here will ensure that all families are entitled to receive the legal benefits they deserve.

- **Foster Care.** Congress should prohibit foster care agencies receiving federal funding from discriminating on the basis of sexual orientation and gender identity and expression.
- **DOMA Repeal.** Congress should repeal the Defense of Marriage Act (DOMA).
- **Federal Form Categories.** The Office of Management and Budget should require that any federal government forms requiring information about an individual's parents use the label "Parent" rather than "Mother" and/or "Father."
- **Repeal FMLA Regulation.** The Department of Labor should repeal recently revised regulations for the Family and Medical Leave Act to ensure that medical privacy laws are not violated and transgender status is not intentionally or inadvertently revealed to employers.
- **Transgender Marriage Recognition.** In each agency and program for which marital status is relevant, the federal government should recognize all valid marriages (that were valid at the time of marriage) where one or both persons is transgender, regardless of whether the marriage occurred before or after the transgender person(s) transitioned.

## FAITH-BASED INITIATIVES

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Almost every American would agree that federal government funds should not be used to discriminate. Yet various faith-based programs have insufficient safeguards to ensure that discrimination does not occur. Enacting the policies below will prevent religious institutions that receive federal funding from discriminating against transgender people when providing services.

- **Executive Order on Discrimination.** The President should issue an Executive Order prohibiting programs receiving federal funds from discriminating against individuals on the basis of sexual orientation or gender identity or expression.
- **Agency Policy on Discrimination.** All federal agencies, including those that have Centers for Faith-Based and Community Initiatives, should establish that programs receiving federal funds may not discriminate in employment or in the provision of services on the basis of sexual orientation or gender identity or expression.

## HATE CRIMES

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Transgender people face well-documented and unconscionable levels of bias-motivated violence. This is especially true of young, low-income transgender women of color. The stigma associated with being transgender requires transgender people to maintain constant vigilance against sudden brutal violence. For years, transgender people have been murdered on an average of more than one person per month; many more have been assaulted. While a deep societal issue like hate cannot be entirely resolved by the government, the steps recommended here will result in large strides toward safety.

- **Federal Hate Crimes Prevention.** Congress should pass the Local Law Enforcement Hate Crimes Prevention Act (LLEHCPA).
- **Community Relations Service.** Congress should amend Title X of the Civil Rights Act of 1964 to allow the Department of Justice’s Community Relations Service to respond to conflicts based on categories covered by the Local Law Enforcement Hate Crimes Prevention Act, including sexual orientation and gender identity and expression.
- **Day of Remembrance.** Congress should pass a joint resolution formally recognizing the “National Transgender Day of Remembrance” and encouraging Americans to commemorate the lives of transgender victims of hate-motivated violence.
- **National Crime Victimization Survey.** The Bureau of Justice Statistics (BJS) should integrate information about a victim’s sexual orientation and gender identity and expression into its National Crime Victimization Survey.
- **Foreign Service Training.** Federal government employees, human rights officers, and all staff located abroad should receive training about hate crimes against lesbian, gay, bisexual, and transgender individuals. This training should also include protocols for respectful treatment of transgender people, including the use of preferred pronouns and names.

## CONCLUSION

At the National Center for Transgender Equality, we realize that we have both an enormous opportunity and a tough journey ahead of us. This document is intended to educate the transgender community, the greater LGBT community, our allied organizations, and policy makers about the work that must be done to ensure transgender people can live safely and fully in our society. Although some issues may be overlooked, we believe this document provides us with firm ground on which to continue our work, and we will use this document to guide us moving forward. We cannot express enough thanks to our coalition partners that provided expertise, guidance, and feedback on these issues. It is our hope that transgender people and our allies will use this document to guide advocacy work throughout the federal government, and we look forward to celebrating those victories with each and every one of you.



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